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The Honorable Brian D Lynch  
Chapter: 13  
Location: Tacoma, Courtroom I  
Hearing: February 27, 2019  
Time: 1:30p.m.  
Response Date: February 20, 2019

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8 **UNITED STATES BANKRUPTCY COURT**  
9 **WESTERN DISTRICT OF WASHINGTON, TACOMA DIVISION**

10 In re:  
11 David Michael Collins,  
12 Debtor,

Bankruptcy Case Number: 17-44369-BDL

Chapter: 13

13 **MOTION FOR RELIEF FROM**  
14 **AUTOMATIC STAY**

15  
16 **TO THE HONORABLE BRIAN D LYNCH, UNITED STATES BANKRUPTCY COURT**  
17 **JUDGE, THE DEBTOR, THE DEBTOR'S COUNSEL, THE TRUSTEE AND OTHER**  
18 **INTERESTED PARTIES:**

19 **PLEASE TAKE NOTICE** that Caliber Home Loans, Inc., and its successors and/or  
20 assignees ("Caliber"), hereby files this Motion For Relief From The Automatic Stay (the "Motion")  
21 in the above-entitled and numbered Chapter 13 case.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTORY STATEMENT**

4 Movant respectfully requests that the Court grant it relief from the automatic stay  
5 based upon the Debtor's failure to tender post-petition payments.

6 **II.**

7 **STATEMENT OF FACTS**

8 1. **The Secured Debt.** On or about July 25, 2014, David M. Collins executed  
9 and delivered a Promissory Note ("Note") in the original principal amount of \$361,879.00. The Note  
10 is secured by a duly perfected deed of trust ("Deed of Trust") on property commonly known as 5843  
11 Steamboat Island Rd NW, Olympia, WA 98502-9634 ("Property"). True and correct copies of the  
12 Note and Deed of Trust are attached hereto as Exhibits "1" and "2," respectively.

13 An Assignment of Deed of Trust dated January 22, 2018 from Mortgage Electronic  
14 Registration Systems, Inc. as designated nominee for Caliber Home Loans, Inc. to Caliber Home  
15 Loans, Inc. is attached as Exhibit "3."

16 2. **The Default Under The Note.** The Note and Deed of Trust are contractually  
17 due for the November 1, 2018 payment and post-petition due for the November 1, 2018 payment. As  
18 of January 8, 2019, the post-petition delinquency is as follows:

19	3	(11/01/2018 - 01/01/2019)	Payments due at	\$2,568.99	\$7,706.97
20			Grand Total		\$7,706.97

21 A true and correct copy of a post-petition ledger reflecting all payments coming due and  
22 all payments received since the filing of the petition is attached hereto as Exhibit "4." Attorney's  
23 fees and costs plus other miscellaneous costs, if any, may be added to this figure.

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3. The monthly payment includes a portion in the amount of \$735.40, which represents impounds for taxes and/or insurance.

4. **The Debtor's Interest In The Property.** The Debtor is the owner of record of the Property.

5. **The Filing Of The Instant Petition.** On or about November 22, 2017, David Michael Collins filed the instant Chapter 13 Petition as Case No. 17-44369-BDL.

6. **The Total Indebtedness Under The Note.** As of January 8, 2019, the total indebtedness owed to Movant, exclusive of attorneys' fees, is as follows:

Principal Balance	\$334,966.00
Interest Accrued to January 8, 2019	\$4,057.44
Fees Currently Assessed	\$665.00
Grand Total	\$339,688.44

7. **The Total Liens On The Property.** The Property is encumbered by the following liens:

<b><u>SECURED CREDITOR</u></b>	<b><u>LIEN AMOUNT</u></b>
1. Caliber Home Loans, Inc.	\$339,688.44
<b>TOTAL</b>	<b>\$339,688.44</b>

8. **The Value Of The Property.** According to the Debtor's sworn schedules, the Property has a value of only \$525,300.00. True and correct copies of the Debtor's Schedules A and D are attached hereto as Exhibit "5."

9. **Foreclosure Status.** Foreclosure action against the Property had not been initiated prior to the filing of the instant petition.

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1 III.

2 **THE AUTOMATIC STAY SHOULD BE TERMINATED**

3 **BASED ON THE DEBTOR'S FAILURE TO MAKE**

4 **POST PETITION PAYMENTS**

5 Ninth Circuit case law clearly sets forth the duty of a Chapter 13 debtor to maintain post-  
6 petition contractual installment payments to secured lenders as a condition for eligibility for Chapter  
7 13 relief.

8 In In re Gavia, 24 B.R. 573 (9th Cir. B.A.P. 1982), the Bankruptcy Appellate Panel held that  
9 Debtors who lack sufficient regular income to enable them to maintain current contractual  
10 installment payments as well as payments under a Chapter 13 Plan are ineligible for Chapter 13  
11 relief.

12 In In re Ellis, 60 B.R. 432 (9th Cir. B.A.P. 1986), the Bankruptcy Appellate Panel held that  
13 post-confirmation default on payments to a secured creditor constitutes cause for terminating the  
14 automatic stay under § 362(d)(1), and that it is the Debtor's burden to show that no cause exists.

15 The stay should be terminated immediately, pursuant to § 362(d)(1), based upon the Debtor's  
16 failure to tender the regular monthly post-petition payments in the instant case.

17 IV.

18 **REQUEST FOR JUDICIAL NOTICE.**

19 Pursuant to Rule 201 of the Federal Rules of Evidence, as made applicable herein by  
20 Rule 9017 of the Federal Rules of Bankruptcy Procedure, Caliber requests that the Court take  
21 judicial notice of the following facts:

- 22 1. The Debtor contends that the Property has a fair market value of \$525,300.00. See  
23 Exhibit "5."

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V.

**CONCLUSION**

For the foregoing reasons, and based upon the evidence set forth in this Motion, Movant respectfully requests that the Court grant Movant relief from the automatic stay to allow Movant to enforce its rights and remedies under its Note and Deed of Trust, including a waiver of the 14-day stay provided by Federal Rule of Bankruptcy Procedure 4001(a)(3). Movant further requests that the Order Terminating the Automatic Stay be binding and effective despite any conversion of this bankruptcy case to a case under any other Chapter of Title 11 of the United States Code. Movant specifically requests that the Court award Movant's attorney's fees and costs incurred in connection with this matter pursuant to the terms of Movant's Note and Deed of Trust.

DATED: January 31, 2019

Respectfully Submitted,

MALCOLM ♦ CISNEROS, A Law Corporation

By: /s/ Nathan F. Smith,  
Nathan F. Smith, WSBA # 43160  
Attorney for Movant